

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

HEALTH FACILITIES EVALUATION AND LICENSING DIVISION

**OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY
LICENSURE**

Adopted Amendment: N.J.A.C. 8:43G-5.1

Adopted New Rules: N.J.A.C. 8:43G-5.22 and 5.23

Hospital Licensing Standards

Hospital Administration and General Hospital-wide Policies

General Hospital Governing Body Training Requirements

Proposed: June 16, 2008 at 40 N.J.R. 3553(a).

Adopted: October 9, 2008 by Heather Howard, Commissioner, Department of Health and Senior Services (with the approval of the Health Care Administration Board).

Filed: October 17, 2008 as R.2008 d.344, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-12.34.

Effective Date: November 17, 2008.

Expiration Date: July 22, 2010.

Summary of Public Comments and Agency Responses:

On April 30, 2007, P.L. 2007, c. 74, codified at N.J.S.A. 26:2H-12.34 (hereinafter referred to as the Act), was enacted. The Act requires any person appointed after April 30, 2007, to serve as a member of a general hospital board of trustees to complete a trustee training program approved by the Commissioner of Health and Senior Services (Commissioner) that is designed to clarify the roles and duties of a hospital trustee and that is at least one day in length. N.J.S.A. 26:2H-12.34a(1). On June 16, 2008, the Department of Health and Senior

Services (Department) proposed administrative rules to implement the requirements of the Act. The comment period expired August 15, 2008. The Department received comments from the persons and entities listed below. The numbers in parentheses following each comment correspond to the commenters listed below.

1. Fred J. Jacobs, Esq., General Counsel, and Karen S. Ali, Esq, Vice President, New Jersey Hospital Association, Princeton, NJ;

2. Edward A. Cienki, Esq., Hammonton, NJ, representing Bayonne Hospital Center.

COMMENT: The commenters support the proposal. However, they believe that proposed N.J.A.C. 8:43G-5.22(e) should be revised to clarify the grandfathering of board members who have taken an approved trustee education program between the date of enactment of the statute, April 30, 2007, and the effective date of the final regulations. Therefore, they recommend that the following language be added to N.J.A.C. 8:43G-5.22(e): "Any trustee who has completed a trustee training program conducted by an approved training provider between April 30, 2007 and the effective date of this section shall not have to retake a trustee training program pursuant to this section." (1)

RESPONSE: As proposed, N.J.A.C. 8:43G-5.22(e) provides that "[a]ny governing board member appointed on or after April 30, 2007, who has not completed a trustee training program conducted by an approved training provider, shall complete the trustee training program by (six months of the effective date of this section)." N.J.A.C. 8:43G-5.22(e) is intended to grandfather governing body members who have completed a course or program conducted by an approved provider between the enactment date of P.L. 2007, c. 74 (April 30, 2007) and the effective date of these rules, November 17, 2008 so that they would not be required to retake the trustee training program. For each governing body member who has completed the training program, N.J.A.C. 8:43G-5.23(c) requires general hospitals to submit a description of the course goals and objectives, the course names offered by the training providers and an attestation that the course was conducted by an approved provider or that the course instructors are qualified to teach the required subjects. N.J.A.C. 8:43G-5.22(e) clearly requires only those board members who have not already taken a course from an approved provider to complete the course by six months after the effective date of the rules; therefore, board members who have already completed a course from an approved provider are not required to retake the course. The Department will make no change upon adoption because the suggested change is not necessary.

COMMENT: The commenter represents Bayonne Hospital and states that "[i]t is Bayonne Hospital's reasonable belief that the training programs from

approved training providers contemplate and are directed toward 'non-profit, tax-exempt corporations' and do not consider the organizational structure of Bayonne Hospital." The commenter states that Bayonne Hospital is a for-profit hospital organized under the New Jersey Limited Liability Company Act, and that its directors are subject to responsibilities that are considerably different than the responsibilities of non-profit hospitals. The commenter states that there is a higher degree of diligence by members and directors of a limited liability company towards their duties and obligations to the company because personal investment has been placed at-risk. Also, the commenter states that "since Bayonne Hospital is not a 'non-profit' corporation or a publicly traded entity, Sarbanes-Oxley Act corporate responsibility is not a requirement." The commenter asks that for-profit hospitals be waived or excluded from the training requirements because it would either be impossible or an undue burden for them to comply with the requirements or that the Department redraft the training requirements to reflect the unique organizational structure of for-profit hospitals. (2)

RESPONSE: The Department directs the commenter to N.J.S.A. 26:2H-12.34(a)1, which states that "[a]s a condition of serving as a member of the board of trustees of a general hospital licensed pursuant to P.L. 1971, c. 136 (C.26:2H-1 et al.), a person shall be required to complete a training program . . . designed to clarify the roles and duties of a hospital trustee . . ." As the enabling statute does not draw a distinction between for-profit general hospitals and non-profit general hospitals, the Department cannot adopt the commenter's suggestion to waive or exclude for-profit hospitals from the training requirement. The Department believes that the directors/trustees of for-profit hospitals need training on topics, such as fiscal responsibility and ethics, especially since for-profit hospitals receive public funds from programs, such as Medicare, Medicaid and the State charity care program. The Department believes that N.J.S.A. 26:2H-12.34 is intended to ensure that facilities receiving public funds are held accountable. The training program required by N.J.A.C. 8:43G-5.22(b) is not limited to subjects that are only relevant to directors of non-profit general hospitals. Consistent with N.J.S.A. 26:2H-12.34, the subjects of instruction include topics relevant to directors of for-profit hospitals, such as ethical and fiduciary responsibilities, the role of the governing body in improving health care quality, hospital financial management, hospital organization and governance and legal and regulatory compliance issues (N.J.A.C. 8:43G-5.22(b)). For-profit general hospitals should be able to find an instructional program that accommodates their needs because N.J.A.C. 8:43G-5.23 approves a wide variety of training providers. On balance, the seven hours of training required for directors/trustees should not be too burdensome for non-profit general hospitals or for-profit general hospitals. Therefore, the Department will make no change upon adoption in response to the comment.

Federal Standards Statement

The adopted amendments and new rules would not impose standards on hospitals in New Jersey that exceed those contained in Federal law or regulation. Since there is currently no Federal regulation governing training requirements for hospital trustees, a Federal standards analysis is not necessary.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks*[thus]*):

8:43G-5.1 Administrative and hospital-wide structural organization

(a) (No change.)

(b) The hospital shall have an established and functioning governing body responsible for establishing hospital-wide policy, adopting bylaws, maintaining quality of care, and providing institutional management and planning. The hospital shall file the following with its license application or license renewal application:

1. The name of each member of the hospital's governing body;
2. The name of the chairperson of the hospital's governing body;
3. The term of office of the chairperson and each member of the governing body; and
4. The start date and end date of the term of office of each member of the governing body.

(c) (No change.)

(d) The hospital shall advise the New Jersey State Department of Health and Senior Services, Office of Certificate of Need and Healthcare Facility Licensure, in writing within 15 days following any change in the designation of the administrator or chief executive officer of the hospital.

(e)-(l) (No change.)

8:43G-5.22 General *[Hospital Governing Body Training]* ***hospital governing body training***

(a) In addition to any general orientation, a general hospital shall ensure that all members of the hospital's governing body appointed after April 30, 2007,

complete a trustee training program as set forth in (b) below conducted by an approved training provider within six months of the member's appointment.

(b) The trustee training program shall consist of at least seven hours of instruction and address each of the following subjects:

1. The ethical and fiduciary responsibilities of a member of a hospital governing body;
2. The role of the governing body in improving health care quality and the mechanisms available for doing so;
3. Hospital financial management and understanding the financial statements of healthcare institutions and reimbursement and finance payment systems;
4. Hospital organization and governance; and
5. Legal and regulatory compliance issues.

(c) Instruction may be offered in-person at a classroom or seminar, on-line, audio/webinar, or simulcast.

(d) A general hospital shall maintain a copy of the certificate for each current governing body member issued by the training provider pursuant to N.J.A.C. 8:43-5.23(b).

(e) Any governing board member appointed on or after April 30, 2007, who has not completed a trustee training program conducted by an approved training provider, shall complete the trustee training program by *[(six months of the effective date of this section)]* **May 17, 2009**.*

8:43G-5.23 Approved training providers; requirements

(a) In accordance with N.J.S.A. 26:2H-12.34b, the Department approves the following as trustee training providers:

1. Accredited academic institutions that do not have a direct interest, corporate relationship, or primary mission in the support or development of the hospital offering the trustee training program;
2. Non-profit hospital trade associations and/or their affiliates;

3. Non-profit healthcare foundations that do not have a direct interest, corporate relationship, or primary mission in the support or development of the hospital offering the trustee training program;

4. Providers of board development and/or governance leadership training programs for hospitals and/or healthcare providers, such as, but not limited to, the Governance Institute, the American Hospital Association's Center for Healthcare Governance or Estes Park Institute;

5. Non-profit providers of professional legal and/or medical continuing education with expertise in trustee education training; and

6. Any provider of continuing education training with expertise in trustee education training authorized by the International Association for Continuing Education and Training.

(b) The training provider shall issue a certificate to attendees who successfully complete a course.

(c) A general hospital shall submit the following in writing to the Department for review at least 60 days prior to the board member's attendance at a trustee training program or course that fulfills the requirements of N.J.A.C. 8:43G-5.22:

1. A description of the goals and objectives for each of the subject matter areas required by N.J.A.C. 8:43G-5.22;

2. The course names offered by the training providers described in (a) above for each of the subject matter areas required by N.J.A.C. 8:43G-5.22; and

3. An attestation that the course provided as part of the trustee training program offers continuing education credits for the course from an approved training provider in the subjects set forth in N.J.A.C. 8:43G-5.22(b) or that the course instructors and their qualifications demonstrate competency and expertise in the subjects set forth in N.J.A.C. 8:43G-5.22(b).

(d) The information required in (b) and (c) above shall be submitted to the Office of Certificate of Need and Healthcare Facility Licensure, New Jersey Department of Health and Senior Services, PO Box 358, Trenton, NJ 08625.

(e) The submission shall be deemed approved unless the Department issues a request for additional information within 10 days of receipt.